

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LEVY ROUSE

Petitioner,

v.

**Civil Action no. 3:06cv67
(Judge Bailey)**

AL HAYNES, et al.,

Respondents.

**REPORT AND RECOMMENDATION
THAT CASE BE DISMISSED WITHOUT PREJUDICE**

On January 31, 2006, the *pro se* petitioner, Levy Rouse, initiated this case by filing a petition pursuant to 28 U.S.C. § 2241 in the United States District Court for the District of Columbia together with an Application to Proceed *in forma pauperis*. On July 10, 2006, the case was transferred to this Court and petitioner was given notice to complete a Prison Trust Account Report, with ledger, along with a Consent to Collection of Fees.

Thereafter, the undersigned reviewed the file and determined that the petitioner had failed to file the required documents. Accordingly, an order was entered on August 15, 2006, advising the petitioner that in order to apply to proceed without prepayment of fees, he must file a certified copy of his trust account statement, a ledger sheet for the prior six months, and a consent to collection of fee from trust account. As well, the order gave notice that failure to file all said documents or pay the full filing fee within thirty (30) days from the date of the order would result in a Recommendation that the action be dismissed.

A review of the file shows that as of the date of this Opinion, petitioner has not paid the filing fee nor filed the required forms to proceed without prepayment of fee. In addition, the petitioner has not filed a motion to extend time to do so, or otherwise explained his reasons for

noncompliance. Accordingly, it is the recommendation of the undersigned that the instant case be **DISMISSED** without prejudice for the failure to prosecute unless the Court hears to the contrary within ten (10) days from the date of this Order. Any pleadings, motions, letters or other documents filed in response to this Report and Recommendation should be submitted to the Honorable James P. Bailey, United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to mail a copy of this Report and Recommendation to the *pro se* petitioner and counsel of record, as applicable.

DATED: May 8, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE